

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3
4 AIMEE BEVAN, as Personal Representative of
5 the Estate of Desiree Gonzales, deceased,
6 Plaintiff,
7 -vs- Case No. 1:15-CV-00073-KG-SCY
8 SANTA FE COUNTY, MARK GALLEGOS,
9 Deputy Warden/Acting Youth Development
10 Administrator, in his official and individual
11 capacities, GABRIEL VALENCIA, Youth Development
12 Administrator, Individually, MATTHEW EDMUNDS,
13 Corrections Officer, Individually, JOHN ORTEGA,
14 Corrections Officer, MOLLY ARCHULETA, Corrections
15 Nurse, Individually, ST. VINCENT HOSPITAL, and
16 NATHAN PAUL UNKEFER, M.D.,
17 Defendants.
18
19 EXAMINATION BEFORE TRIAL of
20 MICHAEL D. COHEN, M.D., held at Breakell Law
21 Firm, 10 Airline Drive, Albany, New York on
22 Thursday, January 21, 2016, commencing at
23 10:35 a.m., before HORA B. LAMICA, Court Reporter
24 and Notary Public in and for the State of New York

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Ex.3

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(Exhibit 101 marked for identification.)

Q. Doctor, just in terms of kind-of a basic chronology for the case, I think what the -- what you're contending in terms of just a general overview of the case is that Desiree Gonzales was a juvenile who overdosed at about 7:30 p.m.. She was given Narcan by EMTs. She was then transported to St. Vincent's Hospital, where she was observed for a period of time. She received a medical clearance from that facility, and then she arrived at the YDP, the county facility I represent, about two to three hours after the overdose and after she received the Narcan, and then later began to develop symptoms consistent with a recurring overdose. Is that kind-of a basic working fact pattern for you here?

A. **That's a basic fact pattern, I think, but I really didn't express an opinion about the original overdose, or the EMT resuscitation in the field, or the hospital care prior to her transfer.**

Q. And I'm not asking you to do that. I'm just trying to see if we can agree that that's the basic working fact pattern that you're dealing

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with here?

A. **Could you repeat the part about what happened at the detention center?**

Q. Sure. She arrived at the YDP approximately two to three hours after her overdose and receipt of Narcan, and then -- and began to exhibit symptoms consistent with recurrence of the overdose?

MR. TAYLOR: Form.

A. **I guess so. Symptoms consistent with heroin overdose. Whether it's recurrent or continuing, I don't know that.**

Q. And I'm not asking you to. What I am going to ask you, though, is how many times in your career have you seen this particular fact pattern of a juvenile overdosing, receiving Narcan, going to the hospital, getting a medical clearance, and then going to a detention facility with the clearance, and then developing either a recurrence or a continuing overdose?

A. **I have not seen that before.**

Q. You would agree with me this is a very unusual case?

MR. HUNT: Object to the form.

A. **I don't know that.**

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Q. You've never encountered it, correct?

A. **Correct.**

Q. How many years have you been practicing in the juvenile detention setting?

A. **Well, I was in a state agency for twenty years in a largely administrative position, where we did not have youth coming from the street into our facilities. I spent one year working at the New York City jail at Riker's Island, which was a pre-adjudication detention facility, but the youth coming into our custody at that time had usually spent two or three days in police lockup and central booking before they got to the island. So it would not have occurred in the settings in which I practiced.**

Q. I see. So you've never encountered this particular fact pattern?

A. **That's right.**

Q. And have you talked to any colleagues that have ever experienced a fact pattern like this?

A. **No.**

Q. Are you aware of any discussion in any medical literature that describes a fact pattern like this?

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A. **I've seen discussions of recurrent overdose, but not exactly this fact pattern.**

Q. I see. And I got a -- what's been called a supplemental expert report from you by plaintiff's counsel last Friday, January 15th. You're aware of that supplemental report?

A. **Yes.**

Q. And so the opinions that you're expressing in this case are based on seven months of work and reflection on the various -- at least seven months on the various records and materials in the case, correct?

A. **Yes.**

Q. You've had the benefit of hindsight, correct?

A. **Well, I didn't have all the documents available to me for seven months. Some of the documents were only made available in December, in particular the depositions and the sheriff's report and the training records.**

Q. But you've had an opportunity, during the time that you worked on the case, to reflect back over with an extensive period of time about the facts and the circumstances, correct?

A. **Yes.**

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1 they're unconscious?

2 **A. Or sleeping, yes.**

3 **Q.** Because it's during the period of unconsciousness
4 that they're failing to protect their airway
5 adequately, right?

6 **A. Well, protecting the airway is a different issue**
7 **entirely, but when people who are suffering from**
8 **excess narcotics or are awake and alert, or when**
9 **they're stimulated to wake back up, they will**
10 **continue to breathe, but when they're asleep or**
11 **passed out, then the breathing -- the abnormal**
12 **breathing pattern will emerge and they may indeed**
13 **stop breathing.**

14 **Q.** Is that -- let me just ask it in a different way.
15 Is that a common symptom for a person who is
16 under the influence of heroin to report that I'm
17 just having trouble breathing?

18 **A. I don't think so, unless there's some other**
19 **medical complication going on. If they had a**
20 **pulmonary embolus from a heart valve infection or**
21 **something like that, that's not relevant to this**
22 **case.**

23 **Q.** And that's what I'm saying. Let's exclude other
24 things. If we're just talking about a heroin

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1 overdose, people don't usually say, "I'm having
2 trouble breathing." That doesn't -- it's usually
3 not vocalized that way as a symptom, right?

4 **A. Yes. Just give me a minute to think about it,**
5 **though.**

6 **Q.** Sure.

7 **A. I mean, it really depends on the history of the**
8 **individual, what kind of symptoms they may have**
9 **had before they shot up and so on.**

10 **Q.** Again, I'm excluding other causes. I'm just
11 saying they're talking about heroin.

12 **A. So your hypothetical is in the pure, let's say**
13 **first time shot heroin overdose?**

14 **Q.** Not necessarily first time shot, but any kind of
15 heroin overdose. Let's just limit it to that.

16 **A. Well, I don't know that there is such a thing as**
17 **a pure heroin overdose.**

18 **Q.** I'm saying without complicating factors like
19 pulmonary edema.

20 **A. Right. As long as they're awake, I would not**
21 **expect them to complain about breathing problems,**
22 **unless there's some other medical issue going on**
23 **related to the heroin. But she -- we don't know**
24 **what else may have been going on with her when**

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1 **she was complaining to her mother.**

2 **Q.** Did you see any indication anywhere that
3 Ms. Gonzales conveyed any of the information
4 that's reflected in this paragraph to anyone at
5 the time?

6 **A. No. She was asked many questions about whether**
7 **she called the facility, whether she talked to**
8 **the doctors or nurses. She did not. I don't**
9 **recall if she was asked whether she talked to her**
10 **older son or anyone else about it. I don't know**
11 **that.**

12 **Q.** I mean, at that time, she also had a concern that
13 she was going to be arrested that evening on her
14 own warrant?

15 MR. HUNT: Object to the form.

16 **A. Well, no. Once she was in the room with Desiree,**
17 **I believe that had been addressed already,**
18 **because they wouldn't let her in the room, I**
19 **don't believe, until that had been settled, if I**
20 **remember correctly.**

21 **Q.** Were you aware that there were also police
22 officers in the room?

23 **A. I don't know if they were in the room or at the**
24 **door. My impression was that they were at the**

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1 **door.**

2 **Q.** I'm just scrolling down the report here. You had
3 some opinions that Nurse Archuleta should have
4 given more explicit direction to the correctional
5 officers about how to monitor Ms. Gonzales'
6 breathing under these circumstances; is that
7 right?

8 **A. Yes.**

9 **Q.** Is that something that you've given instruction
10 about before in your practice?

11 **A. I don't think so. I don't think so. I haven't**
12 **given or asked nurses on call to give advice**
13 **about how to observe someone that's post-heroin**
14 **overdose.**

15 **Q.** You have a little list on Page 8 and 9 of your
16 second report. Actually, it's on Page 8 about
17 some breathing observation methods. That's what
18 I'm going to call it. Where did you obtain that
19 information on Page 8?

20 **A. Those were things that came to mind as I thought**
21 **about the type of instruction that she could have**
22 **given them. So it's based on my clinical**
23 **experience and experience working with nurses and**
24 **working with direct care staff in juvenile**

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1 facilities. These are the kinds of things that
2 we do, or in my agency that we did occasionally
3 ask staff to do when they needed to observe
4 someone.

5 I also found, when I was reviewing the
6 training records, that there was some specific
7 questions in the CPR AED post-test that mimic
8 these almost exactly, but I wasn't reading those
9 training records until yesterday or the day
10 before and I wrote this report --

11 Q. On Friday?

12 A. -- the previous week.

13 Q. What CPR -- what records are you referring to?

14 A. The training records of -- I think I saw them in
15 Edmunds, Ortega and Valencia, at least two of the
16 three. I think Edmunds and Ortega for sure. I
17 don't recall if I saw them in Valencia's, as
18 well.

19 Q. And you say that's in CPR training?

20 A. Well, there's training -- documentation of
21 training, some files for each of those
22 individuals.

23 And the post-test for I think the 2011, the
24 2010, maybe 2009 First Aid/CPR/AED training

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1 included two specific questions. One was about
2 when do you call 9-1-1. Of the four choices,
3 when the person was having trouble breathing is
4 the correct answer.

5 And the other question was which of the
6 following are signs or symptom - I don't remember
7 the exact words - of troubled breathing. And one
8 is more rapid or slower, and another was painful.
9 Another was turning blue, or strange sounds was
10 part of the answer, unusual or strange sounds
11 breathing. And then another was unusual color of
12 the skin of blue or dark. Blue or pale, I think
13 it said. So in any case, the answer to that
14 question was all of the above.

15 Q. So that's in the context of what, just general
16 medical emergencies; is that --

17 A. It was the First Aid/CPR/AED class. These are
18 the things that the people who are being trained
19 to provide life-saving treatment are being
20 taught, and we're documenting their answers in
21 their training records.

22 Subsequent to that year, the training
23 records have only the question number and the
24 letter of the answer, so they had to fill out an

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1 answer sheet, filling in slugs, as opposed to the
2 previous year, where they had the whole test, the
3 question, and they circled the correct answer.

4 So in those earlier years that I was just
5 discussing, you could -- as a reviewer, I could
6 see what the question was and what the answers
7 were. Subsequently, that wasn't in the record.

8 Q. Does that information impact your opinion about
9 what you believe the nurse should have
10 communicated in terms of instruction?

11 A. Well, it supports my belief that things like
12 counting the number of breaths per minute or
13 listening for unusual sounds or looking at the
14 color were things -- supports the idea that these
15 are things that lay staff could do, because it
16 was part of their First Aid/CPR/AED training.

17 Q. My question is this. Do you -- there's a
18 criticism of the nurse about not providing more
19 specific guidance for observations of
20 Desiree Gonzales with respect to her breathing.
21 Are you saying now that based on this training
22 that you've just noticed over the last couple
23 days that, well, she didn't really need to do
24 that?

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1 A. No, not at all. I'm saying that because they had
2 had that training, there was all the more reason
3 why she should have felt comfortable giving them
4 advice about, more specifically, how to observe
5 their breathing.

6 Q. Because they, as correctional officer staff, may
7 not have discerned or understood how to look at
8 breathing in a particular way. That was more
9 detailed than what they would ordinarily do in
10 doing unit checks, right?

11 A. If I understand the question correctly, yes, that
12 is part of the point I was making is that I
13 believe she would have known what their usual or
14 routine unit checks consisted of, which is
15 looking in the window, into the room, observing
16 that the youth's chest is moving, and therefore,
17 they're okay, move onto the next room. And that
18 routine would not have been appropriate for
19 Desiree, and that's why additional instruction
20 would have been needed.

21 Q. I think ultimately, though, you would say that at
22 least in this case, the nurse shouldn't even have
23 gotten to that point because Desiree Gonzales
24 should have been sent to the hospital regardless?

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